

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 67

Introduced by Assembly Member Nava

December 10, 2008

~~An act to add Section 4052.6 to the Business and Professions Code, relating to pharmacy. An act to add Chapter 8 (commencing with Section 20700) to Division 20 of the Elections Code, relating to elections.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 67, as amended, Nava. ~~Pharmacy Patient Protection Act of 2008.~~*Elections: campaign advertisements and communications.*

Existing law generally makes actionable the use of libelous or slanderous materials in campaign advertising and communications.

This bill would prohibit a person, as defined, from knowingly using the name, voice, signature, photograph, or likeness of a minor in an advertisement or communication for or against a candidate or a ballot measure without the written consent of the parent or legal guardian of the minor, if the minor is under 12 years of age, or the written consent of the minor, if the minor is 12 years of age or older. The bill would provide that violation of this provision is subject to a civil penalty for each instance in which the violating advertisement or communication is aired or published, if a court finds that the privacy interests of the minor outweigh the speech interests of the person.

~~Existing law, the Unruh Civil Rights Act, provides that all persons are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation and are entitled to the full and equal~~

~~accommodations, advantages, facilities, privileges, or services in all business establishments.~~

~~Existing law, the Pharmacy Law, the knowing violation of which is a crime, provides for the licensure and regulation of pharmacists and pharmacies by the California State Board of Pharmacy in the Department of Consumer Affairs. Existing law prohibits pharmacists and other health care licentiates from obstructing a patient in obtaining a prescription drug or device that has been legally prescribed or ordered for that patient, except if the licentiate refuses on ethical, moral, or religious grounds and otherwise, as specified. Existing law provides that a violation of this prohibition constitutes unprofessional conduct and shall subject the pharmacist or other health care licentiate to disciplinary or administrative action by his or her licensing agency. Existing law authorizes the Board of Pharmacy to impose disciplinary actions including suspension and revocation of a pharmacist's license, as specified.~~

~~This bill would establish the Pharmacy Patient Protection Act of 2008, which would require pharmacists to dispense all lawfully obtained prescriptions when the prescribed medication is in stock without regard to any ethical, moral, or religious objections.~~

~~This bill would provide that a pharmacist's failure to dispense a prescription as required would be grounds for revocation of the pharmacist's license.~~

~~Existing law requires pharmacies to post prominently a notice describing a patient's rights to obtain a prescription drug or device without obstruction by a pharmacist with exceptions and providing additional information, as specified. Existing law permits a pharmacy to provide the patient a written receipt containing the information required on the notice in lieu of posting a notice.~~

~~This bill would require a pharmacy to prominently display a sign explaining the patient's rights established by this bill, including the telephone number and Internet Web site for patients to utilize in filing a complaint.~~

~~This bill would make specified findings and declarations of the Legislature.~~

~~Because this bill would impose new requirements and prohibitions under the Pharmacy Law, the knowing violation of which would be a crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 8 (commencing with Section 20700) is
2 added to Division 20 of the Elections Code, to read:

3
4 CHAPTER 8. USE OF THE IMAGE OF A MINOR

5
6 20700. (a) A person shall not knowingly use the name, voice,
7 signature, photograph, or likeness of a minor in an advertisement
8 or communication for or against a candidate or a ballot measure
9 without prior written consent from either of the following:

10 (1) The parent or legal guardian of the minor, if the minor is
11 under 12 years of age.

12 (2) The minor, if he or she is 12 years of age or older.

13 (b) A violation of subdivision (a) is subject to a civil penalty of
14 ten thousand dollars (\$10,000) for each instance in which the
15 advertisement or communication is published or aired if a court
16 of competent jurisdiction finds that the privacy interests of the
17 minor whose identifying information was used in the advertisement
18 or communication outweigh the speech interests of the person who
19 used the identifying information of the minor in the advertisement
20 or communication.

21 (c) For purposes of this chapter, the following terms have the
22 following meanings:

23 (1) "Minor" has the same meaning as used in Section 6500 of
24 the Family Code.

25 (2) "Person" has the same meaning as used in Section 20200.

26 SECTION 1. ~~This act shall be known, and may be cited, as the~~
27 ~~Pharmacy Patient Protection Act of 2008.~~

28 SEC. 2. ~~(a) The Legislature finds and declares that the~~
29 ~~California Supreme Court held in Benitez v. North Coast Women's~~
30 ~~Care Medical Group (2008) 44 Cal. 4th 1145, that the physicians'~~

1 constitutional rights to free speech and free exercise of religion
2 afforded by the First Amendment to the United States Constitution
3 did not exempt the physicians from complying with the Unruh
4 Civil Rights Act (Sections 51 to 53, inclusive, of Civil Code. The
5 court further held that the liberty of conscience provided in Section
6 4 of Article I of the California Constitution was insufficient to
7 allow the physicians to engage in sexual orientation discrimination.
8 The court held that the Unruh Civil Rights Act furthered a
9 compelling interest in ensuring full and equal access to medical
10 treatment irrespective of sexual orientation, and there were no less
11 restrictive means to achieve that goal.

12 (b) The Legislature finds and declares that the state has a
13 compelling interest in ensuring full and equal access to dispensed
14 prescriptions and that interference with full and equal access to
15 dispensed prescriptions is inconsistent with the safety of the state.

16 (c) The Legislature intends to apply the principles of this case
17 law to dispensing of prescriptions by pharmacists to further ensure
18 all patients full and equal access to medical treatment irrespective
19 of sexual orientation, or otherwise.

20 SEC. 3. Section 4052.6 is added to the Business and Professions
21 Code, to read:

22 4052.6. (a) Notwithstanding paragraph (3) of subdivision (b)
23 of Section 733, a pharmacist shall dispense each lawfully obtained
24 prescription presented by a patient provided that the prescribed
25 medication is in stock at the pharmacy in which the pharmacist is
26 practicing. A pharmacist shall dispense prescriptions irrespective
27 of the pharmacist's ethical, moral, or religious objections. The
28 liberty of conscience, within the meaning of Section 4 of Article
29 I of the California Constitution, shall not be lawful grounds for a
30 pharmacist to fail to dispense a prescription.

31 (b) If a pharmacist fails to dispense a prescription pursuant to
32 subdivision (a), the patient named on the prescription, or his or
33 her duly authorized representative, may file a complaint with the
34 board in connection with the pharmacist's failure to dispense the
35 prescription.

36 (c) A violation of subdivision (a) shall be grounds for revocation
37 of a pharmacist's license by the board.

38 (d) Every pharmacy that is open to the public shall prominently
39 display a notice explaining the patients' rights established pursuant
40 to this section, including the telephone number and Internet Web

1 site of the board for patients to utilize in filing a complaint. The
2 format and wording of the notice shall be adopted by the board by
3 regulation. The notice required by this subdivision shall be in
4 addition to any notice requirement imposed by subdivision (a) of
5 Section 4122.

6 SEC. 4. ~~No reimbursement is required by this act pursuant to~~
7 ~~Section 6 of Article XIII B of the California Constitution because~~
8 ~~the only costs that may be incurred by a local agency or school~~
9 ~~district will be incurred because this act creates a new crime or~~
10 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
11 ~~for a crime or infraction, within the meaning of Section 17556 of~~
12 ~~the Government Code, or changes the definition of a crime within~~
13 ~~the meaning of Section 6 of Article XIII B of the California~~
14 ~~Constitution.~~